

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY W. BROWN

Petitioner,

vs.

EDWARD C. FLORES,

Respondent.

No. C 07-02793 JW (PR)

ORDER OF DISMISSAL;  
 DENYING MOTION FOR LEAVE  
 TO PROCEED *IN FORMA*  
*PAUPERIS*

(Docket No. 2)

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has filed two previous petitions for a writ of habeas corpus with this Court. The earliest petition, Case No. C 99-21153 JW (PR), was denied on the merits on January 14, 2004. Petitioner filed a second petition, Case No. C 02-00036 JW (PR)), which challenged the same conviction and sentence as the first petition. Accordingly, the Court dismissed the second petition as a second or successive petition pursuant to § 2244 (b)(1). The instant petition is now the third filed by petitioner challenging the same conviction and sentence.

A district court must dismiss claims presented in a second or successive

Order of Dismissal

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1 habeas petition challenging the same conviction and sentence unless the claims  
2 presented in the previous petition were denied for failure to exhaust. See 28 U.S.C.  
3 § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999).


4 Additionally, a district court must dismiss any new claims raised in a successive  
5 petition unless the petitioner received an order from the court of appeals authorizing  
6 the district court to consider the petition. See 28 U.S.C. § 2244(b)(2).

7 Here, the instant petition challenges the same sentence as the previous  
8 petitions and petitioner has not presented an order from the Ninth Circuit Court of  
9 Appeals authorizing this Court to consider any new claims. Petitioner's first petition  
10 was adjudicated on the merits in this Court's order denying the petition on January  
11 14, 2004. Accordingly, this Court must dismiss the instant petition in its entirety.

12 The instant petition is DISMISSED as a second and successive petition  
13 pursuant to § 2244 (b)(1).

14 Petitioner's motion to proceed in forma pauperis (Docket No. 2) is DENIED  
15 as moot. No fee is due.

16  
17 DATED: July 27, 2007

  
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JAMES WARE  
United States District Judge